IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7214 of 1989

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SMT JIVIBEN BALDEVBHAI PATEL - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL TRANSPORT SERVICE & 1 - Respondent(s)

==========

Appearance :
MR MUKESH H RATHOD for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MR NIKHIL KARIEL for MR BP TANNA for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 18/09/2006

ORAL JUDGMENT

Feeling aggrieved by the judgment and award dated 30th June, 1989 passed by the Labour Court, Ahmedabad in Reference No.811/1984, the workman has

preferred the present petition under Article 227 of the Constitution of India in so far as the workman has not been awarded the backwages.

The workman was employed by the respondent – Ahmedabad Municipal Transport Service as a Driver. Since 1st August, 1982 the workman went on medical leave for three months. After expiry of the period of leave, the workman did not report for duty. By order dated 4th August, 1983 he was discharged from service. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court, Ahmedabad and registered as Reference No.811/1984.

According to the workman, he had to remain absent from service on account of his illness. After expiry of period of leave he had applied for further leave on 18th January, 1983, 22nd January, 1983 and 9th March, 1983. He had also submitted medical certificate alongwith his application for leave. The order of discharge was made without following due process of law.

In answer to the claim made by the workman, the respondent denied the allegations made by the workman. It was denied that the workman had produced a medical certificate and a fitness certificate. It was also denied that the workman had applied for further leave.

Before the Labour Court the workman failed to prove that he had remained absent on medical grounds. He failed to produce a medical certificate or a fitness certificate. The Labour Court also found that the respondent had terminated the service of the workman without following due procedure of law.

In view of the aforesaid findings recorded by the Labour Court, the Labour Court directed that the workman be reinstated in service. As to the backwages, the Labour Court reasoned that the workman had remained absent from service without any cause, his absence from service had adversely affected the essential service rendered by the respondent-Transport Service. The Labour Court, therefore,

refused to award backwages. Therefore, the present petition.

Before this Court also the workman has failed to establish that at the relevant time he was sick as alleged or he was compelled to remain absent from service for circumstances beyond his control. On the contrary, it appears that the workman remained absent from service for reasons other than what appears on record.

In above view of the matter, the order refusing the backwages need not be interfered with.

For the aforesaid reasons, the petition is dismissed. Rule is discharged.

(Ms. R.M.Doshit, J.)

/moin